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10 *Attorneys for Plaintiff Jesse Meyer, on his own  
behalf, and behalf of all others similarly situated*

11 **IN THE UNITED STATES DISTRICT COURT FOR  
12 SOUTHERN DISTRICT OF CALIFORNIA**

13 JESSE MEYER, an individual, on his own  
14 behalf and on behalf of all others similarly  
situated,

15 Plaintiff,

16 v.

17 PORTFOLIO RECOVERY  
18 ASSOCIATES, LLC, a Delaware limited  
liability company, and DOES 1-100,  
inclusive,

19 Defendants.

20 No. 11-cv-01008-AJB-RBB

Hon. Anthony J. Battaglia

**DECLARATION OF ETHAN PRESTON**

Date: June 23, 2011

Time: 1:30 p.m.

Location: Courtroom 12, Second Floor  
Edward J. Schwartz Courthouse  
940 Front Street  
San Diego, California 92101-8900

21 1. My name is Ethan Preston. I am an attorney at law licensed to practice before all  
22 of the courts of the State of California. I am counsel of record for Plaintiff Jesse Meyer  
23 ("Meyer"), and have personal knowledge of all of the facts set forth in this declaration.

24 2. Attached to this declaration as Exhibit 1 is a true and correct excerpt of the  
25 Securities Exchange Commission Form 10-K of Portfolio Recovery Associates, Inc., dated  
26 February 25, 2011. Portfolio Recovery Associates, Inc. is the parent company of Defendant  
27 Portfolio Recovery Associates, LLC ("PRA"). Exhibit 1 excerpts the portions of this Form 10-K  
28 which are relevant to Meyer's Motion for Preliminary Injunction. The Form 10-K provides

1 information about PRA's use of skip-tracing:

2 If a collector is unable to establish contact with a customer . . . , the collector  
3 must undertake skip tracing procedures to develop important account  
information. **Skip tracing is the process of developing new phone . . .**  
4 **information on a customer**, or verifying the accuracy of such information. Each  
5 collector does his or her own skip tracing using a number of computer  
applications available at his or her workstation, a process which is significantly  
supplemented by a series of automated skip tracing procedures implemented by  
us on a regular basis.

6 (Ex. 1 11.) The Form 10-K provides information about PRA's use of predictive dialers:

7 *Predictive Dialer Technology*

8 The Avaya Proactive Contact Dialer enables our collection staff to focus on  
9 certain defaulted consumer receivables according to our specifications. Its  
predictive technology takes into account all collection campaign and dialing  
parameters and is able to automatically adjust its dialing pace to match changes in  
campaign conditions and provide the lowest possible wait times and abandon  
rates, with the highest volume of outbound calls.

10 (Ex. 1 at 14.) Finally, the Form 10-K states that "In the process of collecting accounts, we use  
11 automated predictive dialers and pre-recorded messages to communicate with our consumers.

12 [The TCPA] and similar state laws place certain restrictions on telemarketers and users of  
13 automated dialing equipment and pre-recorded messages who place telephone calls to  
14 consumers." (Ex. 1 at 16.)

15 3. Attached to this declaration as Exhibit 2 is a true and correct excerpt of PRA's  
16 responses to Meyer's First Set of Special Interrogatories, except that Meyer has redacted his  
17 telephone number so it is not filed in the public record. PRA's responses to Meyer's Special  
18 Interrogatory Nos. 1 to 4 state that PRA called Meyer's cellular telephone on September 1, 2010,  
19 November 4, 2010, December 14, 2010, and January 4, 2011 using an "Avaya Proactive Contact  
20 Dialer" (with an FCC registration number of AVIUSA-2801-MA-T). Meyer's Special  
21 Interrogatory No. 9 asked PRA to "[s]tate the number of calls PRA has made to CALIFORNIA  
22 RESIDENT'S SKIP-TRACED TELEPHONE NUMBERS since January 4, 2007." PRA's  
23 response states in relevant part:  
24

25 PRA refers Plaintiff to a document produced in response to Request for  
26 Production of Documents Number 1 from which PRA can ascertain the following  
27 information: (1) the telephone number called, (2) whether PRA has a record of the  
number being skip-traced, and (3) whether the telephone number has a California  
area code. PRA cannot verify whether these telephone numbers belong to  
28 California residents, but rather only that these individuals have a cell phone with a

1 California area code and that the number was obtained through skip tracing.  
2 (Ex. 2 at 7.) PRA produced the foregoing document to Meyer on April 1, 2011 as  
3 PRAJM0001300 (the “Document”). The Document consists of a list of 613,797 telephone  
4 numbers. (Meyer’s number is the 491,446th telephone number listed in the Document.) Through  
5 a series of emails dated April 12, April 15, and April 18, PRA’s counsel confirmed that the  
6 telephone numbers listed in the Document are (1) cellular telephone numbers with a California  
7 area code; (2) which PRA obtained via skip-tracing; and (3) which PRA called between January  
8 1, 2007 to March 31, 2011. The Document is not attached to this declaration because PRA  
9 designated them as confidential under the stipulated protective order entered by the Superior  
10 Court of the County of San Diego.

11 4. Attached to this declaration as Exhibit 3 is a true and correct excerpt of PRA’s  
12 responses to Meyer’s First Set of Requests for Admission. PRA’s responses to Meyer’s Requests  
13 for Admission Nos. 12 to 23 admit that (1) PRA called Meyer’s cellular telephone number on  
14 September 1, 2010, November 4, 2010, December 14, 2010, and January 4, 2011; (2) PRA used  
15 an electronic device to dial Meyer’s telephone number; and (3) none of PRA’s employees or  
16 agents manually dialed Meyer’s telephone number. PRA’s responses to Meyer’s Requests for  
17 Admission Nos. 24 to 27 admit the devices used to dial Meyer’s cellular telephone number on  
18 September 1, 2010, November 4, 2010, December 14, 2010, and January 4, 2011 are “capable of  
19 storing more than two telephone numbers.” PRA’s responses to Meyer’s Requests for Admission  
20 No. 31 admits that “PRA has called more than 400 California residents using a telephone number  
21 that PRA did not obtain either from a creditor or from the person that uses that cellular telephone  
22 number.”

23 5. PRA has produced an account representative training manual that provides PRA  
24 employees on instructions how to use the Avaya Dialer. These instructions are found on pages  
25 Bates-stamped PRAJM0001497 to PRAJM0001506. PRA has produced a Do Not Call policy  
26 provided to its account representatives which instructs PRA’s representatives to require alleged  
27 debtors to mail a written request to PRA’s headquarters if the alleged debtors do not wish to be  
28 called on their cellular telephone number. This policy is found on the page Bates-stamped

1 PRAJM0000003. The foregoing pages are not attached to this declaration because PRA  
2 designated them as confidential under the stipulated protective order entered by the Superior  
3 Court of the County of San Diego.

4       6. PRA has also produced a user manual for the Avaya Proactive Contact Dialer.  
5 The table of contents for this manual is Bates-stamped PRAJM000274 to PRAJM000292 and  
6 attached hereto as Exhibit 5. On the page Bates-stamped PRAJM000303 to PRAJM000304,  
7 also attached hereto as Exhibit 5, the user manual indicates that the Avaya Proactive Contact  
8 Dialer can import lists of numbers contained within a computer file.

9       7. I have several years experience representing consumers and small businesses in  
10 class actions, focusing on unfair trade practices and mass market technology. I was appointed co-  
11 lead counsel in *Lofton v. Bank of Am. Corp.*, No. 07-05892 (N.D. Cal. Nov. 5, 2008). Prior to  
12 forming Preston Law Offices, I was a partner at KamberEdelson, LLC, a class action law firm  
13 with offices in Chicago and New York. I received my undergraduate degree from the Plan II  
14 program at the University of Texas at Austin with honors, and his law degree from the  
15 Georgetown University Law Center with distinction. I am an active member of the bar in  
16 Arizona and California (and an inactive member of the Illinois and New Mexico bars), and am  
17 also admitted to practice in federal courts in the District of Arizona, the Northern District of  
18 California, the Central District of California, the Southern District of California, the Northern  
19 District of Illinois, the District of New Mexico, the Court of Appeals for the Ninth Circuit, and  
20 the Court of Appeals for the Seventh Circuit. I am an author or co-author of the following  
21 publications: *Cross-Border Collaboration by Class Counsel in the U.S. and Ontario*, 4 Canadian  
22 Class Action Rev. 164 (2007), *The Global Rise of a Duty to Disclose Information Security  
Breaches*, 22 J. Marshall J. Computer & Info. L. 457 (2004) (with Paul Turner), *Computer  
Security Publications: Information Economics, Shifting Liability and the First Amendment*, 24  
25 Whittier L. Rev. 71 (2002) (with John Lofton), and *The USA PATRIOT Act: New Adventures in  
American Extraterritoriality*, 10 J. Fin. Crime 104 (2002). A true and correct copy of the Parisi  
26 & Havens LLP firm resume is attached to this Declaration as Exhibit 4.  
27  
28

8. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of  
the United States of America that the foregoing is true and correct.

Dated: May 16, 2011

s/Ethan Preston  
Ethan Preston

**Certification regarding signature:** I hereby attest that the signatory to this document has approved its content.

By: s/David C. Parisi  
Email: dcparisi@parisihavens.com